VIVIAN L. AMES ET AL.

IBLA 85-642 Decided September 21, 1987

Appeal from a decision of the Fairbanks District Office, Bureau of Land Management, declaring placer mining claim F-60567 null and void.

Affirmed.

1. Mining Claims: Discovery: Generally--Mining Claims: Lands Subject to--Res Judicata

When a mining claim has properly been declared null and void for lack of discovery, a subsequent quitclaim deed from the claimant to a third party conveys nothing as the grantor has no interest which may be conveyed.

2. Mining Claims: Possessory Right

Under the provisions of 30 U.S.C. § 38 (1982), the holding and working of a claim for the period of time equal to the State's statute of limitations is the equal equivalent of proofs of acts of location, recording, and transfer. This provision does not, however, alter other requirements of the mining laws, such as the necessity of a discovery or limitations on acreage which may be taken up in a claim.

APPEARANCES: Vivian L. Ames, Rodney C. Christensen, and Lars Petersen, pro sese.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Vivian L. Ames, Lars Petersen, and Rodney C. Christensen appeal from a decision of the Fairbanks District Office, Bureau of Land Management (BLM), dated April 19, 1985, declaring the More Rain placer mining claim, F-60567, null and void. The decision recited on October 5, 1979, appellants filed a location notice for the More Rain placer mining claim pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), (43 U.S.C. § 1744(b) (1982). The location notice stated the claim was originally located in 1934, within protracted sec. 29, T. 1 N., R. 2 W., Fairbanks Meridian, by W. G. and Irene McLane Moore. This claim, the decision noted, had been declared null and void in a March 26, 1965, decision by a Departmental Hearing Examiner styled, United States of America v. First National Bank of Fairbanks, Contest No. 850 (Fairbanks 027293). The Fairbanks District

Office further noted that this decision was affirmed on appeal by the BLM Office of Appeals and Hearings. Thus, the district office concluded that appellants were precluded from reasserting the validity of the claim because that issue was res judicata. Therefore, BLM rejected the recordation filing and declared the claim null and void. Appellants have timely pursued an appeal from this determination.

The records submitted with this appeal establish that on July 29, 1934, W. G. Moore and Irene McLane Moore located the More Rain mining claim, based on an asserted discovery of gold, and recorded a certificate of location on September 21, 1934. W. G. Moore died on March 22, 1951. On October 31, 1962, the First National Bank of Fairbanks, as trustee for W. G. Moore's estate, filed an amended application for mineral patent of the mining claim. In the patent application, the bank averred an unknown quantity of gold had been removed by Moore prior to his death on March 22, 1951. On November 21, 1963, after a mineral examination had failed to substantiate the existence of a discovery, the Government issued a contest complaint charging that minerals had not been disclosed within the limits of the claim such as would warrant the issuance of a patent.

Chief Hearing Examiner Grayden E. Holt thereupon conducted a hearing. In his March 26, 1965, decision, he stated:

> From the evidence presented at the hearing I find that Mr. Moore sunk a 100 foot shaft on the claim in the middle 1930's, that an 18-foot drift was run at the bottom of the shaft, and that approximately $700 was recovered from the placer material found within the drift. Although Mr. Moore survived until 1951 there was no evidence at the hearing that any further mining operations had been conducted on the claim. The witnesses who testified on behalf of the contestees went no further than to suggest that a prudent person would be justified in sinking another shaft to determine if additional rich pockets of gold bearing placer material could be found. Although I find that additional exploration on the claim may very well be justified, I conclude that there is not now a valuable mineral deposit on the claim within the purview of the mining laws.
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> Accordingly, the More Rain placer mining claim is declared null and void.

An appeal was taken from this decision. On December 6, 1966, the Acting Chief, Office of Appeal and Hearings, BLM, held that the mineral patent application was properly rejected. This decision was further appealed to the Assistant Solicitor, Land Appeals. This appeal was dismissed on March 29, 1967, for failure to timely file a statement of reasons. See United States v. First National Bank of Fairbanks, A-30770. No further appeals were pursued.

In their statement of reasons for appeal of the April 19, 1985, decision, appellants recite that Ames purchased the claim on September 25, 1968, from the First National Bank of Fairbanks, and note that she paid county

taxes on the claim for the years for which they were due, 1968-1970. In 1975, BLM notified Ames that the mining claim fell within lands selected by the State of Alaska. In order to protect her business interest as against the State, on June 7, 1979, a copy of the notice of location was filed with BLM pursuant to FLPMA. Appellants contend that they "prospected the claim until 1980, until we had saved enough money to begin a mining operation. We had the property drilled and began clearing" (Statement of Reasons (SOR) at 2). In 1982, appellants aver that they began mining the claim and filed for acquired water rights. On July 30, 1982, Ames conveyed one third of the claim to Lars Petersen and one third of the claim to Rod Christensen. 1/

Appellants describe in detail their activities in attempting to develop the property, noting that "we had complied with every state, federal and local agency for permits, license and environmental statements until 1992. Then we received your [BLM] letter of April 19, 1985 declaring the mine null and void" (SOR at 3). Appellants declare that "when the federal government declares this mine null and void, it will automatically go to the person holding the state claim along with all our effort and expenses from 1968 to 1984" (SOR at 4).

Appellants dispute the prior determination that the claim was null and void for lack of a discovery. Appellants state that they researched the early history of the mine, including interviewing miners who worked the claim. With regard to the prior hearings, appellants submit:

> Many things could have been brought out in the original hearings but wasn't because of either the possibility of tax on the estate, or people not wanting to be involved in a court case, or both. And the federal government not wanting to grant patent to the First National Bank handling the estate of George Moore and obtaining the property strictly for resale. The federal government therefore declaring it null and void for lack of discovery therefore denying patent.

(SOR at 5). Furthermore, appellants assert that "this mine could become a profitable mine" with the machinery and equipment available today. Appellants thus seek to reopen the prior hearing in order to establish that the conclusions therein reached were erroneous.

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1 Ames had earlier assigned one-third interest to Christensen in 1981 and then quitclaimed one-third interest to Christensen in 1982. It is unclear whether these transactions concern the same one-third interest.

void, First National had no interest in the claim which it could convey to appellants. Thus, appellants could obtain no interest in the claim pursuant to the grant.

Appellant suggests that the 1964 determination of invalidity was, itself, in error. This finding, however, is not subject to attack now in what is essentially a collateral proceeding. Quite apart from principles of res judicata and administrative finality (but see United States v. Johnson, 39 IBLA 337, 345-46 (1979)), appellants are precluded from attempting to reopen the prior litigation by the simple fact that they obtained no interest in the subject of that litigation from First National when they received the quitclaim deed, because First National had none to convey.

[2] This does not end the matter however. The provisions of 30 U.S.C. § 38 (1982) provide, in part, that:

> Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the state or territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto * * * in the absence of any adverse claim * * *.

Thus, if appellants could show that they held and worked a claim for the statutory period required for adverse possession under color of title in Alaska, and the land was open to mineral location during that period of time, then, pursuant to 30 U.S.C. § 38 (1982), appellants could show a constructive relocation of a new claim. See United States v. Haskins, 59 IBLA 1 (1981); Dolores Olsen, 45 IBLA 232 (1980).

In Alaska the time prescribed by the statute of limitations for establishing adverse possession for interests in real property is 7 years. Alaska Stat. § 09.25.050 (1983). Appellants, however, are unable to show the requisite period of holding and working because the land was not open for location for 7 years during the period of occupancy.

On November 30, 1961, the State of Alaska filed State selection application F-028735, embracing inter alia, various lands in T. 1 N., R. 2 W., Fairbanks Meridian. As originally filed, the application did not cover sec. 29 of the township. A number of amendments, however, were subsequently submitted. Of particular relevance herein was the amendment filed on June 16, 1972. By this amendment, the State expanded its selection application to cover all of T. 11 N., R. 2 W., except for patented lands. Pursuant to 43 CFR 2091.6-4 (1972), and 43 CFR 2627.4(b) (1972), all available land was thereby segregated from mineral entry. Appellants, however, received their quitclaim deed from First National on September 25, 1968. Even if we were to assume that appellants commenced holding and working the land as of that date, less than 4 years would have passed before the land was withdrawn from mineral entry by the State's selection. Application of 30 U.S.C. § 38 (1982),

however, is dependent upon a showing that the land was open to mineral entry during the entire period required. See United States v. Haskins, 505 F.2d 246 (9th Cir. 1974); Ernest Higbee, 60 IBLA 267 (1981). Since the Alaska Statutes require possession for 7 years the 4 years for which they might possibly show the requisite use and occupancy are insufficient. This, the instant claim may not be validated by recourse to the provisions of 30 U.S.C. § 38 (1982).

We are not unmindful of the significant expenditures and efforts which appellants have made on this claim, or of the fact that they were sold the claim by a party which had actual knowledge of its invalidity without bothering to inform them of that fact. Nevertheless, we have no alternative but to apply the applicable law to the facts. Thus, for the reasons set forth above, we must conclude that the Fairbanks District Office correctly determined the claim to be null and void.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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James L. Burski
Administrative Judge

We concur:

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Bruce R. Harris
Administrative Judge

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R.W. Mullen
Administrative Judge